

CITY OF LYNNWOOD

ORDINANCE NO. 2598

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE REGULATION OF CRITICAL AREAS; AMENDING SECTIONS 17.10 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

WHEREAS, the Growth Management Act requires local jurisdictions to adopt development regulations that protect critical areas designated in accordance with RCW 36.70A.170; and

WHEREAS, RCW 36.70A.172 requires local jurisdictions to give special consideration to the conservation and protection measures necessary to preserve or enhance anadromous fisheries; and

WHEREAS, critical areas within the City of Lynnwood include wetlands, streams, fish and wildlife priority habitat, and geologically hazardous areas; and

WHEREAS, development may result in cumulative impacts to those functions and values of critical areas that contribute to and are necessary for a healthy natural environment and perceived quality of life; and

WHEREAS, the clearing of land for accommodation of residences, businesses, shopping areas and other structures, may have the potential to adversely and significantly impact the functions and values of the City's critical areas; and

WHEREAS, the unwise development of resource lands or areas susceptible to natural hazards may lead to inefficient use of limited public resources, may jeopardize environmental resource functions and values, may subject persons and property to unsafe conditions, and may affect the perceived quality of life; and

WHEREAS, it is more costly to remedy the loss of critical area functions and values than to conserve and protect them from loss or degradation; and

WHEREAS, in determining what critical areas are to be afforded a particular degree of protection, the City has evaluated a wide range of the best available science with respect to the critical areas to make informed decisions that meet the intent of the Growth Management Act and that are also reflective of local needs; and

WHEREAS, the sources of this best available science that were evaluated and considered throughout the process of drafting and adopting these regulations include “*The City of Lynnwood Best Available Science Review*” dated January 6, 2005 authored by the consulting firm Jones and Stokes; and “*Regulatory Options and Strategies for the City of Lynnwood Critical Areas Ordinance*” dated January 6, 2005 authored by the consulting firm Jones and Stokes; and “*Wetland Exemption – Supplemental BAS Discussion*” dated April 18, 2005 authored by the consulting firm Jones and Stokes; and “*The Critical Areas Assistance Handbook: Protecting Critical Areas Within the Framework of the Washington Growth Management Act*” dated November 2003 distributed by the Washington State Department of Community, Trade, and Economic Development; and “*The Washington State Wetland Rating System for Western Washington – Revised*” publication #04-06-025 distributed by the Washington Department of Ecology; and “*Washington State Wetlands Identification and Delineation Manual*” publication #96-94 distributed by the Washington Department of Ecology; and *Wetlands in Washington State Volume 2: Managing and Protecting Wetlands*” publication #04-06-024 distributed by the Washington Department of Ecology; and

WHEREAS, the City has held numerous public hearings and work sessions, and solicited public comment on the proposed regulations, and have considered the public comments in developing the regulations; and

WHEREAS, the City has met on several occasions with representatives of the Washington Department of Ecology to develop the proposed regulations; and

WHEREAS, protection standards for one critical area often provide protection for one or more other critical areas; and

WHEREAS, critical areas may also be protected by other actions by the City, such as stormwater management standards, critical area restoration, tree regulations, and public education, as well as from other external regulations, such as the Forest Practices Act, the Shoreline Management Act, and the State Environmental Policy Act; and

WHEREAS, the U.S. Constitution prohibits the taking of private property without just compensation; and

WHEREAS, wetlands and streams are environmentally sensitive and serve numerous natural functions and values. These functions include wildlife and fisheries habitat, water quality protection, flood protection, shoreline stabilization, stream flow, and ground water recharge and discharge. In many situations, these functions cannot be adequately replicated or replaced; and

WHEREAS, the scientific literature cited by this ordinance supports the establishment of protective buffers adjacent to wetlands and streams to provide for sediment control; to control nutrient inputs to wetlands and streams; recognizes the importance of large woody debris; and supports other functions important to riparian areas and wetlands to protect their important functions; and

WHEREAS, wetlands will be identified and rated according to the Washington State Wetland Identification and Delineation Manual and the Washington State Wetland Rating System for Western Washington prepared by the Washington State Department of Ecology; and

WHEREAS, the best available scientific literature cited by this ordinance, and used in developing these regulations supports the proposed protective buffers ranging from 25 to 225 feet of relatively intact native vegetation to adequately protect wetland and streams functions and values; and

WHEREAS, geologically hazardous areas are subject to periodic geological events that may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare; and

WHEREAS, geologic hazards may be exacerbated by development and human activity within these sensitive areas, and impacts resulting from geologic hazards may be reduced by limiting development and human activity within or adjacent to the geologic hazard; and

WHEREAS, some geologic hazards may be intensified during periods of consistent or heavy rainfall that results in ground saturation or surface water drainage flows; and

WHEREAS, fish and wildlife priority habitat areas perform many important physical and biological functions that benefit the City and its residents, including but not limited to maintaining species diversity and genetic diversity; providing opportunities for food, cover, nesting, breeding and movement for fish and wildlife; serving as areas for recreation, education and scientific study and aesthetic appreciation; helping to maintain air and water quality; controlling erosion; and providing neighborhood separation and visual diversity within urban areas; and

WHEREAS, the best available science literature cited by this ordinance, and used in developing these regulations supports the preservation of priority species and essential habitat and species; and

WHEREAS, WAC 365-190-080(5) grants the City the flexibility to make decisions in the context of local circumstances, and specifically excuses local jurisdictions from being required to protect “all individuals of all species at all time”;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:

Section 1. Chapter 17.10 of the Lynnwood Municipal code is hereby repealed.

Section 2. A new Chapter 17.10 of the Lynnwood Municipal Code is hereby created as follows:

## **ENVIRONMENTALLY CRITICAL AREAS**

### Sections:

17.10.010	Purpose.
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17.10.070	Building setback line – Streams.
17.10.080	Fish and wildlife priority habitat.
17.10.081	Wildlife habitat assessment.
17.10.090	Geologically hazardous areas – Identification.
17.10.091	Geologically hazardous areas – Setbacks.
17.10.092	Geologically hazardous areas – Alteration allowed.
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17.10.094	Geotechnical report content requirements.
17.10.100	Buffer credit.
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17.10.111	Critical areas signs, monuments and fencing.

- 17.10.120 Appeals.
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- 17.10.130 Unauthorized alterations.
- 17.10.131 Enforcement, violations and penalties.
- 17.10.140 Severability.

#### **17.10.010 Purpose.**

The purpose of this chapter is to identify critical areas and to supplement the development requirements contained in the Lynnwood Municipal Code by providing for additional controls as required by the Washington State Growth Management Act and other laws. Wetlands, streams, fish and wildlife priority habitat areas, and geologically hazardous areas, as defined in LMC 17.10.030, constitute critical areas that are of special concern to the City of Lynnwood. The standards and mechanisms established in this chapter are intended to protect the functions and values of these environmentally critical features for the public benefit, while providing property owners with reasonable use of their property. By regulating development and alterations to critical areas this chapter seeks to:

- A. Protect the public health, safety and welfare by preventing adverse impacts of development;
- B. Educate the public as to the long-term importance of environmentally critical areas and the responsibilities of the City to protect and preserve the natural environment for future generations;
- C. Effectively manage environmentally critical areas by regulating development within and adjacent to them;
- D. Mitigate unavoidable impacts to environmentally critical areas by regulating alterations in and adjacent to critical areas;
- E. Protect the City's critical areas using best available science;
- F. Prevent, to the extent practicable, adverse cumulative impacts to the water quality, wetlands, streams, stream corridors and fish and wildlife habitat;
- G. Improve streams and watercourses, particularly those associated with Scriber Creek and Swamp Creek to a more natural condition wherever possible, and establish reasonable development incentives to encourage such improvement;
- H. Protect the public, and public resources and facilities from injury, loss of life, property damage or financial losses due to flooding, erosion, landslides, soil subsidence or steep slope failure;
- I. Alert appraisers, assessors, owners and potential buyers or lessees to the development limitations of environmentally critical areas;
- J. Provide the City of Lynnwood with information necessary to approve, condition, or deny public or private development proposals;
- K. Provide predictability and consistency to the City of Lynnwood's development review process; and
- L. Implement the policies of the State Environmental Policy Act, , the Growth Management Act, and all City functional plans and policies. (Ord. 2045 §8, 1995; Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.015 General provisions.**

- A. Abrogation and Greater Restriction. It is not intended that this chapter repeal, abrogate or impair any existing regulation, easements, covenants or deed restrictions. However, where this chapter imposes greater restrictions, the provisions of this chapter shall prevail.
- B. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.
- C. Rule-Making Authority. The Director is authorized to adopt written rules and procedures for the implementation of the provisions of this chapter. (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.020 Applicability.**

This chapter establishes regulations for the protection of properties which contain or are adjacent to environmentally critical areas. Environmentally critical areas include those which meet the definitions and requirements of this chapter. The City may inventory critical areas on maps for reference purposes. All critical areas shall be verified by separate studies to indicate the extent of such areas or sites which are environmentally critical. Development proposals for properties which contain or are adjacent to designated or regulated environmentally critical areas shall comply with the provisions and requirements of this chapter. A permit shall be obtained from the City for any activity which alters or disturbs an environmentally critical area or buffer, including but not limited to, clearing, grading, draining, filling, dumping of debris, demolition of structures and installation of utilities. Further, a permit shall be obtained from the City for any proposed activity adjacent to a critical area. No boundary line adjustments or development permits including subdivisions, short plats, conditional use permits, rezones or variances shall be granted for any lot which contains or is adjacent to an environmentally critical area until approvals as required by this chapter have been granted by the C. The provisions of this chapter apply to projects proposed by private and public entities. No permit granted pursuant to this chapter shall remove an applicant's obligation to comply in all respects with the applicable provisions of any other federal, state, or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.030 Definitions.**

Terms used in this chapter shall have the meaning given to them in this chapter, unless where used the context thereof clearly indicates to the contrary. Words and phrases used herein in the past, present or future tense shall include the past, present and future tenses; and phrases used herein in masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders; and words and phrases used herein in the singular or plural shall include the singular and plural; unless the context shall indicate to the contrary.

- A. “Adjacent” means within 200 feet of an environmentally critical area, measured from the edge of the environmentally critical area.

“Adjacent wetland” means the entire area of the wetland under consideration and not just the portion within 200 feet of a environmentally critical area.

“Alteration” means any human-induced action which impacts the conditions of a critical area or buffer. Alterations include but are not limited to increasing buffer; decreasing buffer; averaging buffer; grading; filling; dredging; draining; channelizing; cutting of trees; clearing; paving; construction; dumping; and demolition.

“Areas of special flood hazard” means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

- B. “Best Available Science” is current scientific information used in the process to designate, protect, or restore critical areas, that is derived from a valid scientific process as defined by WAC 365-195-900 through 925.

“Buffer” means a designated or regulated area adjacent to an area designated or regulated as a critical area.

- C. “City” means the City of Lynnwood.

“Clearing” means the removal of vegetation or other organic plant materials by physical, mechanical, chemical or other means.

“Compensation” means the replacement, enhancement, or creation of an environmentally critical area equivalent in functions, values and area to those being altered or destroyed.

“Creation” means bringing a critical area into existence at a site in which a critical area did not formerly exist.

“Critical areas” means the following areas:

1. Wetlands;
2. Streams;
3. Fish and Wildlife Priority Habitat
4. Geologically Hazardous Areas;

And any additional areas defined or established as critical areas under the provisions of the Washington State Growth Management Act or the provisions of this chapter.

- D. “Department” means Department of Public Works.

“Development proposal site” means the legal boundaries of the parcel or parcels of land for which the applicant has applied to the City for development permits.

“Director” means the Director of Public Works and/or the Director’s designee.

“Drainage facility” means the system of collecting, conveying, treating, and storing surface and storm water runoff. Drainage facilities shall include but not be limited to all surface and storm water runoff conveyance and containment facilities including streams, pipelines, channels, ditches, infiltration facilities, filtration and treatment facilities, retention/detention facilities, and other drainage structure and appurtenances, both natural and manmade.

- E. “Enhancement” means an action which increases the functions and values of a critical area or its buffer.
- “Erosion hazard areas” means those areas containing soils which, according to the U.S. Soil Conservation Service Soil Survey, have severe to very severe erosion hazard potential.
- “Essential habitat” means habitat necessary for the survival of species listed as “threatened” or “endangered” under the federal Endangered Species Act, species listed as “threatened” or “endangered” by the Washington Department of Fish and Wildlife, species listed as “candidate” or “species of concern” by the US Fish and Wildlife Service or NOAA Fisheries, and species listed as “sensitive” or “state candidate” by the Washington Department of Fish and Wildlife.
- F. “Functional values” and / or “functions” means the beneficial roles that critical areas and their buffers serve, including but not limited to water quality protection and enhancement, fish and wildlife habitat, food chain support, flood storage, conveyance and attenuation, groundwater recharge and discharge, erosion control, aesthetic values and recreation.
- G. “Geologically hazardous areas” means those areas:
1. Have naturally occurring slopes of 40 percent or more;
  2. Other areas which the City has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazard.
- H. “Hydrologically connected” means a critical area has a surface water connection to another critical area, is within 200 feet of another critical area, or lies within the floodplain of another critical area, and whose hydrology is directly affected by changes in the other critical area.
- L. “Lot coverage” has the meaning as defined in Chapter 21.02 LMC.
- M. “Mitigation” means a negotiated action involving the use of one or more of the following:
1. Avoiding impacts altogether by not taking a certain action or parts of an action;
  2. Minimizing impacts by limiting the degree of magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
  3. Rectifying the impact by repairing, rehabilitating or restoring the affected critical area;
  4. Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal; or
  5. Compensating for the impact by replacing, enhancing, or providing substitute critical areas.
- “Monitoring” means evaluating the impacts of development on the biological, hydrologic and geologic elements of natural systems and assessing the performance of required mitigation through the collection and analysis of data by various methods for the purposes of understanding and documenting changes in natural ecosystems and features.



- N. “Net development area” means the total horizontal area of a project site, less any or all of the following:
1. Areas within a project site which are required to be dedicated for public rights-of-way, or otherwise set aside for roads;
  2. Areas required by the City of Lynnwood to be dedicated or reserved as separate tracts, which may include, but not be limited to:
    - a. Critical areas and their buffers to the extent they are required by this chapter to remain undeveloped;
    - b. Areas required for stormwater control facilities other than facilities which are completely underground, including but not limited to retention/detention ponds, biofiltration swales and setbacks from such ponds and swales;
    - c. Regional utility corridors;
    - d. Other areas, excluding setbacks, required by the City of Lynnwood to remain undeveloped.
- O. “Ordinary high water mark” A mark that has been found where the presence and action of waters are common, usual and maintained in an ordinary year, long enough to create a distinction in character between water body and the abutting upland.
- P. “Person” means an individual, firm, partnership, association or corporation, governmental agency, or political subdivision.  
“Priority species” means those species of concern due to their population status and their sensitivity to habitat manipulation. Priority species include those which are listed as “threatened” or “endangered” under the federal Endangered Species Act, species listed as “threatened” or “endangered” by the Washington Department of Fish and Wildlife, species listed as “candidate” or “species of concern” by the US Fish and Wildlife Service or NOAA Fisheries, species listed as “sensitive” or “state candidate” by the Washington Department of Fish and Wildlife, or are designated as such by the Priority Habitat and Species Program of the Washington Department of Fish and Wildlife.
- Q. “Qualified professional” means a qualified scientific expert with expertise appropriate to the relevant critical areas as determined by the person's professional credentials and / or certifications, or as determined by the Director.
- R. “Restoration” means actions to return an environmentally critical area to a state in which its stability, functions and values approach its unaltered state as closely as possible.  
“Riparian” means the lands adjacent to and functionally related to a river or stream.
- S. “Stream” means an area where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is an area which demonstrates clear evidence of the passage of water and includes but is not limited to bedrock channels, gravel beds, sand and silt beds, and defined channel swales. The channel or bed need not contain water year-round.

For the purposes of this chapter, streams shall include both natural channels and manmade channels that were constructed to replace a natural stream. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff devices or other entirely artificial watercourses unless they are used by salmonids or used to convey streams naturally occurring prior to construction in such watercourses.

- W. “Wetlands” means areas that are inundated or saturated by surface water or ground water at a frequency or duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention ponds and landscape amenities. Wetlands do include those artificial wetlands intentionally created from nonwetland areas to mitigate conversion of wetlands.  
(Ord. 2257 §2, 1999; Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.040 Permitted uses.**

Uses permitted on properties subject to this chapter shall be the same as those permitted in the zoning district in which the property is located.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.045 Submittal requirements.**

- A. Critical Areas Permit Application Required. Any application for land use, boundary line adjustments or development proposals by private or public entities, including rezones, subdivisions, building permits, clearing and grading permits, tree permits, or other activities which will result in any alteration or modification within or adjacent to an environmentally critical area or its standard buffer width shall include an application for a critical areas permit. The critical areas permit application shall be submitted to the department of public works for processing as required by LMC 2.44.040. The Director or the Director’s designee shall review the information submitted by the applicant together with any other available information. If the Director determines that there is insufficient environmental information to evaluate the proposal, the applicant shall be notified that additional environmental studies are required. The Director reserves the right to refuse to accept an incomplete application. The Director may waive the requirement for a special study if there is substantial showing that there will be no alteration of the critical area or buffer and that there will be no significant adverse impacts on the critical area as a result of the proposed development.
- B. Contents of Special Studies. Special environmental studies shall be prepared by a qualified person with expertise in the area of concern in accordance with the requirements of this chapter and to the satisfaction of the department. Special studies are valid for three years, after such date the

City will determine if a revision or additional assesment is necessary.  
Such studies shall:

1. Provide a site plan and written report describing the conditions of the property, illustrating the proposed development and the environmentally critical area; and
  2. Identify and characterize any critical area and associated buffer on or adjacent to the site. Such characterizations shall comply with the methods described and accepted in this chapter; and
  3. Describe how the proposed development will impact the critical area(s) and associated buffer(s) which are present on or which are adjacent to the property; and
  4. Describe any plans for alteration or modification of the critical area(s) and associated buffer(s); and
  5. A statement of any plans to utilize buffer credit, and provide a detail of the calculations; and
  6. A statement of the resources and methodology used in the reporting reflecting the use of “best availabe science;” and
  7. Provide recommended methods for avoiding or mitigating any identified impacts.
- C. Previous Critical Area Review. Any development proposals which are proposed to occur on sites that previously underwent critical or sensitive areas review, and have an established and legally documented critical area buffer, shall not be subject to additional critical area review and requirements, provided:
1. The development proposal would not encroach into the previously established buffer area; and
  2. The development proposal will not increase the existing level of impact on the critical area.
- (Ord. 2076 §21, 1996; Ord. 1877, 1992; Ord. 2598, 2005)

#### **17.10.046 Exemptions allowed.**

Certain activities set forth in LMC 17.10.047 are exempt from the requirements of this chapter. The Director may exempt such activities, as well as others, provided:

- A. No person shall conduct any activity within or adjacent to any critical area or critical area buffer that is exempt from the provisions of this chapter until such time as such person has given ten (10) days advance written notice (except for an emergency per LMC 17.10.047(A)) to the Director. The notice shall identify the activity to be conducted and the exemption(s) relied upon by the person who intends to conduct such activity; and
  - B. Such exemptions shall be verified by City staff and acknowledged on the face of the written notice prior to the commencement of the activity; and
  - C. If absolutely unavoidable, impacts to critical areas and their buffers are minimized; and
  - D. Impacted areas are immediately restored.
- (Ord. 1877, 1992; Ord. 2598, 2005)

#### **17.10.047 Exemptions.**

Subject to the conditions and requirements of LMC 17.10.046, the following situations are exempt from the operation of this chapter:

- A. Emergency actions necessary to prevent an immediate threat to public health, safety or welfare, or that pose an immediate risk of damage to private or public property, and that require action in a timeframe too short to allow for normal processing of the requirements of this Chapter. After the emergency action is taken, the Director shall be notified of these actions within 7 days. The Director may require the person or agency relying on this exemption to then restore and / or mitigate for any impacts to critical areas and or buffers in accordance with an approved critical areas study and / or mitigation plan.
- B. All existing developed areas located within critical areas or their associated buffers have a legal nonconforming status as to use and setback requirements.
- C. Existing structures, facilities, landscaping or other improvements that because of their existing location do not meet the setback requirements of this chapter, may be remodeled, reconstructed or replaced, or maintained or repaired, providing that any such activity does not further intrude into a critical area or buffer, increase the building footprint more than 10%, or adversely affect critical area functions. Maintenance and repair does not include any modification that increases the amount of impervious surface, and does not include construction of an additional access road. Nothing herein releases the site from compliance with the provisions of Chapter 21 LMC.
- D. Normal and routine maintenance of existing drainage ditches, drainage retention/detention facilities, or ornamental landscape ponds; provided, that none of these are part of a critical area mitigation plan required by this chapter.
- E. Relocation of electric facilities, lines, equipment, or appurtenances, not including substations, with an associated voltage of 55,000 volts or less, and relocation of natural gas, cable communications, telephone facilities, and water or sewer lines, pipes, mains, equipment or appurtenances, only when required and approved by the City, and subject to the following:
  - 1. No practical alternative location is available; and
  - 2. The applicant demonstrates such construction is necessary for gravity flow (if applicable); and
  - 3. Construction is accomplished using best management practices; and
  - 4. The wetland and buffer environment is protected to the maximum extent possible during construction and maintenance; and
  - 5. The original grade is replaced; and
  - 6. Joint use of a utility corridor by other utilities may be allowed and is strongly encouraged.
- F. Installation, construction, replacement, repair, operation or alteration of electric facilities, lines equipment or appurtenances (not including

substations) with an associated voltage of 55,000 volts or less in improved City road right-of-way (which may be within or adjacent to a critical area or its buffer).

- G. Installation, construction, replacement, repair, operation or alteration of natural gas, cable and telecommunication facilities, water or sewer lines, pipes, mains, equipment or appurtenances in improved City road right-of-way (which may be within or adjacent to a critical area or its buffer).
- H. Repair or overlay of improved City road right of way, which may be within or adjacent to a critical area or its buffer, so long as it does not further encroach into the critical area or its buffer.
- I. Minor site investigation work necessary for land use submittals, such as surveys, delineations, soil logs, percolation tests, and other related activities where such activities do not require construction of new access roads or significant amounts of excavation or vegetation removal. In every case, impacts to critical areas and buffers shall be minimized and disturbed areas shall be immediately restored.
- J. Removal of the following non-native vegetation with hand labor from critical areas and buffers provided that appropriate erosion-control measures are used, and the area is revegetated with native vegetation:
  - 1. Himalayan blackberry (*Rubus discolor*, *R. procerus*);
  - 2. Evergreen blackberry (*R. laciniatus*);
  - 3. English Ivy (*Hedera helix*);
  - 4. Japanese knotweed (*Polygonum cuspidatum*);
  - 5. Any plant identified as noxious on the Washington State Noxious Weed List.

Mechanical equipment may be used for removal of the above listed vegetation, subject to prior Director approval.

- K. Isolated Category III and IV wetlands under 2,500 square feet which have 80 percent or greater areal cover by invasive species, and have been determined by a qualified professional to be of low function, may be exempted from the requirements of this Chapter, provided that action is taken to mitigate for the lost functions. Adequate and appropriate mitigation measures shall be submitted by the applicant, prepared by a qualified professional, subject to the approval of the Director, and may include, but is not limited to, stormwater quality and quantity treatment, and / or native landscaping enhancements. Please note that state and federal permits may still apply.  
(Ord. 1877, 1992; Ord. 2598, 2005)

#### **17.10.048 Reasonable use exception – Allowed.**

If the application of this chapter would deny all reasonable use of the property, development may be allowed which is consistent with the general purpose of the chapter and the public interest, provided:

- A. An application for a reasonable use exception containing the elements required in section 17.10.049 of this code shall be filed with the

department and shall be considered by the Hearing Examiner at a public hearing under Process I (LMC 1.35.100 through 1.35.180).

- B. The Hearing Examiner must determine that:
  - 1. Application of this chapter would deny all reasonable use of the property;
  - 2. There is no reasonable use with less impact on the critical area;
  - 3. The proposed development does not pose an unreasonable threat to the public health, safety or welfare; and
  - 4. Any alteration to the critical areas or buffers must be the minimum necessary to allow for the reasonable use of the property; and
  - 5. Impacts to critical areas and buffers are mitigated consistent with the purpose and standards of this Chapter to the greatest extent feasible; and
  - 6. The inability of the applicant to derive reasonable use of the property is not the result of actions of the property owner or some predecessor, which thereby created the condition after the effective date of this chapter.
- C. The burden of proof shall be on the applicant to provide sufficient information to the Hearing Examiner in support of a decision on the applicant.
- D. If the hearing examiner grants a reasonable use exception, the examiner may impose any condition(s) to ensure that the development is consistent with the intent of this chapter.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.049 Reasonable use application and process.**

Whenever an applicant requests a reasonable use exception, they shall submit a complete application to the Director for review. The applicant is strongly encouraged to schedule a submittal appointment with the Department to submit their application. This meeting will ensure that the applicant has a complete application, containing all of the elements required by this section. The Department may refuse to accept an incomplete application. The Director shall prepare a recommendation to the Hearing Examiner based on review of the submitted information.

The reasonable use application shall include the following information, which will be used to evaluate whether a reasonable use exception shall be allowed:

- A. A complete application and special study, as required by section 17.10.045 of this chapter; and
- B. A mitigation plan specifying the measures taken to mitigate for the impacts; and
- C. A map showing the amount of the lot which is within setbacks required by other standards of the zoning code; and
- D. An analysis of the impact that the proposed development would have on the environmentally critical area(s) and / or their buffer(s); and
- E. A design of the proposal so that the amount of development proposed as “reasonable use” will have the least impact practicable on the environmentally critical area(s); and

- F. A description of the design modifications proposed by the applicant in order to minimize impacts on the critical area(s) and buffer(s). This includes, but is not limited to a description of the modified building footprint, reduced building setback from the buffer, parking modifications, reduced total building square feet, modified location to preserve trees, and any other measures taken by the applicant; and
  - G. A description of the needed modifications to the standards of all applicable chapters to accommodate the proposed development; and
  - H. Any other related projects documents, such as permit applications to other agencies, special studies, and environmental documents prepared pursuant to the State Environmental Policy Act; and
  - I. Such other information as the Director or hearing examiner determines is reasonably necessary to evaluate the issue of reasonable economic use as it relates to the proposed development.
- (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.050 Wetland delineation and rating system.**

- A. Wetlands shall be identified and delineated in accordance with the methodologies detailed in the Washington Administrative Code (WAC) 173-22-080.
  - B. Wetland delineations are valid for three years, after such date the City will determine if a revision or additional assessment is necessary.
  - C. The wetland boundaries established by this process shall be used to meet the requirements of this chapter.
  - D. The total area of wetlands shall be used for the purpose of classification regardless of whether a proposed development site includes all or only a portion of the wetland.
  - E. Wetlands shall be categorized using the Department of Ecology's 2004 Washington State Wetland Rating System for Western Washington.
- (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.051 Standard wetland buffers.**

Wetland buffer widths will be established using three factors: the wetland category; the intensity of impacts; and the functions or special characteristics of the wetland that need to be protected, as determined through the rating system. The standard buffer widths shall be as follows:

	Buffer Width
<b>Category I</b>	110'
<b>Category II</b>	110'
<b>Category III</b>	75'
<b>Category IV</b>	40'

These buffer widths may be increased if the wetland scores highly for habitat. The criteria and distances for such increased buffer widths are identified in 17.10.056. These buffer widths may be reduced to the decreased buffer widths identified in 17.10.057, but nothing less, under the following conditions:

- A. There is a corridor of undisturbed native vegetation at least 100 feet wide between the wetland and any adjacent essential habitat.
- B. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the Director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's manual on Protecting and Managing Wetlands, and / or suggested by a qualified professional.
- C. Any wetland restored, relocated, replaced or enhanced because of wetland alterations shall not be eligible for decreased buffer widths.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.052 Alterations to wetlands and buffers, allowed.**

Alteration, modification, or enhancement of wetlands and buffers may be allowed by this Chapter, subject to the review and approval by the Director. The applicant shall submit to the department a plan detailing the alteration, modification and / or enhancement proposal, along with any proposed mitigation. This plan shall be prepared by a qualified professional. The plans shall meet the criteria of LMC 17.10.053, 17.10.054, 17.10.055, 17.10.111, and 17.10.125 (as applicable).

All wetlands and buffers, regardless of category, shall be preserved unless the applicant can demonstrate the following:

- A. There is no feasible and reasonable alternative to making the alteration;  
and
- B. Alteration will preserve, improve, or protect the functions of the wetland system; and
- C. The mitigation for such alteration has a high probability of success.  
(Ord. 2598, 2005)

**17.10.053 Wetland and buffer alteration criteria.**

- A. Alteration Criteria. Wetland and buffer alteration allowed by this chapter shall be subject to the following requirements:
  - 1. Each activity or use shall be designed so as to minimize overall wetland and buffer alteration to the greatest extent reasonably possible; and
  - 2. Construction techniques shall be approved by the City prior to any site work; and
  - 3. A mitigation plan shall be approved by the City prior to the issuance of any construction permits; and
  - 4. Relocated wetlands shall be within the same sub-basin (as defined within the City's comprehensive flood and drainage management plan); and
  - 5. All mitigation work shall be timed prior to or concurrent with the proposed alterations; and
  - 6. When adding to an existing wetland as a result of compensation for wetland losses, the characteristics of the existing wetland shall be maintained.
- B. Time for Completion.



1. When alteration is allowed, the City may require that the relocated or compensatory wetland and buffer be completed and functioning prior to allowing the existing wetland to be filled or altered.
2. Mitigation shall be completed prior to granting of temporary or final occupancy, or the completion or final approval of any development activity for which mitigation measures have been required.
3. If the mitigation work is not completed within three years of the City approval of the mitigation plan the City may require that a reevaluation of the plan be conducted by a qualified wetland professional. The City may require additional requirements based on the recommendations.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.054 Wetland and buffer mitigation plan.**

A mitigation plan shall be approved by the City prior to the issuance of any permits for development activity occurring on a lot upon which wetland and / or buffer alteration, reduction, averaging, restoration, creation or enhancement is allowed. The mitigation plan shall:

- A. Be prepared by a qualified wetland professional using Washington Department of Ecology accepted methodologies; and
- B. Include a baseline study that quantifies the existing functional values; and
- C. Specify how functional values will be replaced and when mitigation will occur relative to project construction; and
- D. Include provisions for adequate monitoring to ensure success of the mitigation plan. The monitoring plan shall outline the approach for monitoring construction of the mitigation project, and for assessment of the completed project, and shall include a monitoring schedule. A monitoring report shall be submitted annually for a period up to 5 years to the department unless a more frequent time period is required as a condition of the permit, and shall document successes, problems and contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:
  1. Establishing vegetation monitoring plots to track changes in plant species composition and density over time; and
  2. Measuring base flow rates and storm water runoff to model and evaluate hydrologic predictions; and
  3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and
  4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions.
- E. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and

- F. Include provisions for an assurance device, which may include a bond, to assure that work is completed in accordance with the mitigation plan, and to assure that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation fails within five years of implementation.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.055 Wetland alteration compensation.**

As a condition of approving the alteration or relocation of a wetland, the City shall require that an area equal to, or larger than the altered portion of the wetland be provided as compensation for wetland losses. The following ratios apply to creation or restoration of the altered or relocated wetlands. The first number specifies the acreage of replacement wetlands required, and the second number specifies the acreage of wetlands altered or relocated.

- A. Category I: 6:1  
B. Category II: 3:1  
C. Category III: 2:1  
D. Category IV: 1.5:1  
E. The City may increase the ratios under the following circumstances:
1. Uncertainty as to the probable success of the proposed restoration or creation;
  2. Significant period of time between destruction and replication of wetland values;
  3. Projected losses in functional value;
  4. The relocation is off-site.
- (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.056 Increased wetland buffer width.**

Wetland buffer widths may be increased if the wetland provides high quality habitat. The requirement to increase buffer widths shall be supported by the adopted wetland rating system, which shall demonstrate that the wetland scores highly for habitat. The wetland buffers shall be increased according to the following table:

	HABITAT SCORE	Buffer Width
Category I	29 - 36	225'
Category II	29 - 36	225'
Category III	20 – 28	110'
Category IV	> 20	50'

These buffer widths may be reduced to the standard width identified in 17.10.051, but nothing less, under the following conditions:

- A. There is a corridor of undisturbed native vegetation at least 100 feet wide between the wetland and any other essential habitat.
- B. Measures to minimize the impacts of the land use adjacent to the wetlands are applied. These measures must be agreed upon by the Director, and the maximum number of such measures must be used. Examples of such measures may be found in the Washington Department of Ecology's

manual on Protecting and Managing Wetlands, and / or suggested by a qualified professional.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.057 Decreased wetland buffer width.**

Any wetland restored, relocated, replaced or enhanced because of wetland alterations shall have at least the standard buffer width identified in 17.10.051.

Buffer widths may be reduced to the following widths if the conditions allowing reduced buffer widths established in 17.10.051 are met.

Additionally, wetland buffer width may be decreased from the standard width established in 17.10.051 if the wetland has poor habitat. These values shall be supported by the wetland rating system adopted in 17.10.050, which shall demonstrate that the wetland scores poorly for habitat. The wetland buffers may be decreased according to the following table:

	HABITAT SCORE	Buffer Width
Category I	< 20	75'
Category II	< 20	75'
Category III	< 10	50'
Category IV	< 10	25'

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.058 Averaging of wetland buffer widths.**

Wetland buffer widths may be modified by averaging buffer widths. Buffer width averaging will be allowed only where the applicant can demonstrate that:

- A. The total area contained within the wetland buffer after averaging is no less than that contained within the approved buffer prior to averaging; and
- B. Averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property; and
- C. The averaged buffer, at its narrowest point, shall not result in a width less than  $\frac{3}{4}$  of the buffer width allowed for that proposal; and
- D. A mitigation and enhancement plan is prepared for the proposed alteration.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.059 Building setback lines – Wetlands.**

A building setback line of 15 feet shall be required from the edge of any wetland buffer. Following construction, this helps to prevent encroachment into the buffer while maintaining such structures. Fences and minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if the department determines that such intrusions will not negatively impact the wetland. The setback shall be identified on the site plan approved by the City.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.060 Stream – Rating.**

Streams within the City shall receive a rating according to the following categories:

- A. Category I. The following streams are classified as Category I: Scriber Creek, Swamp Creek, Lunds Creek and Halls Creek.

- B. Category II. Category II streams are streams other than Category I streams and that flow year-round during years of normal rainfall or those streams that are used by salmonids.
  - C. Category III. Category III streams are those streams that are naturally intermittent or ephemeral during years of normal rainfall and are not used by salmonids.
- (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.061 Stream buffers.**

Stream buffers shall be required for all regulated activities adjacent to regulated streams. All stream buffers shall be measured from the top of the upper bank or, if that cannot be determined, from the ordinary high water mark as surveyed in the field. In braided channels and alluvial fans, the top of the bank or ordinary high water mark shall be determined so as to include the entire stream feature. Except as otherwise permitted under this chapter, stream buffers shall be retained in a natural, unaltered condition. The following standard buffer widths shall be required, unless modified and approved in accordance with the provisions of this chapter:

- A. Category I streams shall have a 100-foot buffer.
  - B. Category II streams shall have a 60-foot buffer.
  - C. Category III streams shall have a 35-foot buffer.
- (Ord. 2598, 2005)

**17.10.062 Stream alteration allowed.**

- A. All Category I streams shall be preserved. The City may only allow alteration of Category I streams when approved under section 17.10.048 and 17.10.049 of this chapter.
  - B. The City may allow alteration of Category II and / or Category III streams when approved under section 17.10.048 and 17.10.049 of this chapter, or the Director may approve alteration of such streams under the following circumstances:
    - 1. There is no feasible and reasonable alternative to making the alteration; and
    - 2. Alteration will preserve, improve or protect the functions of the stream system; and
    - 3. When the applicant can demonstrate that the alteration or rerouting maintains or enhances the functional values of the stream in terms of water quality, erosion control, and / or fish and wildlife habitat.
- (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.063 Stream alteration criteria.**

Whenever stream alteration is proposed, the applicant shall prepare a mitigation plan, and shall be subject to the following requirements:

- A. Each proposal shall be designed so as to minimize overall stream or buffer alteration to the greatest extent reasonably possible; and

- B. Construction techniques and field marking of areas to be disturbed shall be approved by the City prior to site disturbance to ensure minimal encroachment; and
- C. When stream relocation or compensation is allowed, the City shall require that the stream relocation be completed and functioning prior to allowing the existing stream to be filled or altered.
- D. Additionally, when approving a stream alteration, the City may require:
  - 1. An area larger than the altered portion of the stream and its buffer be provided as compensation for destruction of the functions of the altered stream and buffer and to assure that such functional values are replaced; and / or
  - 2. Development activities be limited to specific months in order to minimize impacts on water quality and wildlife habitat; and / or
  - 3. The City may apply additional conditions or restrictions, or require specific construction techniques in order to minimize impacts to stream systems and their buffers.(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.064 Stream mitigation plan.**

A mitigation plan shall be approved by the City prior to the issuance of any permits for development activity occurring on a lot upon which stream and / or buffer alteration, reduction, averaging, restoration, creation or enhancement is allowed. The mitigation plan shall:

- A. Be prepared by a qualified professional using accepted methodologies; and
- B. Include a baseline study that quantifies the existing functional values of the system, as well as functional values that may be lost, and the stream's functional values after mitigation; and
- C. Specify how functional values will be replaced; and
- D. Specify when mitigation will occur relative to project construction; and
- E. Specify any requirements or permits required by other agencies, and the status of those permits; and
- F. Include provisions for adequate monitoring to ensure success of the mitigation plan. The monitoring plan shall outline the approach for monitoring construction of the mitigation project and for assessment of the completed project, and shall include a schedule. A monitoring report shall be submitted annually for five years to the department unless a more frequent time period is required as a condition of the the permit, and shall document successes, problems and contingency actions of the mitigation project. Monitoring activities may include, but are not limited to:
  - 1. Establishing vegetation plots to track changes in plant species composition and density over time;
  - 2. Measuring base flow rates and storm water runoff to model and evaluate hydrologic predictions;
  - 3. Sampling fish and wildlife populations to determine habitat utilization, species abundance and diversity; and

4. Sampling surface and subsurface waters to determine pollutant loading, and changes from the natural variability of background conditions; and
  - G. Include a contingency plan specifying what corrective actions will be taken should the mitigation not be successful; and
  - H. Include provisions for an assurance device, which may include a bond, to assure that work is completed in accordance with the mitigation plan, and to assure that restoration or rehabilitation is performed in accordance with the contingency plan if mitigation fails within five years of implementation.
- (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.065 Culverting.**

- A. Culverting within a stream shall only be permitted when necessary to provide access to a lot when no other feasible means of access exists.
  - B. Use of common access points shall be required for abutting lots which have no other feasible means of access. Culverting shall be limited to the minimum number of stream crossings required to permit reasonable access.
  - C. For category I streams, and category II streams with the presence of salmonids, only open bottom, or box culverts shall be permitted. When feasible, the use of open bottom, box culverts shall be required on all other category 2, and category 3 streams.
- (Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.066 Increased stream buffer width.**

The buffer width required for the category of stream may be increased up to 50 percent when necessary to protect streams when the stream is particularly sensitive to disturbance, or the development poses unusual impacts. Circumstances which may require buffers beyond minimum requirements include, but are not limited to:

- A. The section of stream affected by the development proposal, and / or the adjacent riparian corridor contains essential habitat; or
- B. The land adjacent to the stream and its associated buffer is classified as a geologically hazardous or unstable area; or
- C. The riparian corridor provides a significant source of water, provides superior shading of stream waters or contributes organic material important to stream habitat areas; or
- D. A trail or utility corridor is proposed within the buffer; or
- E. A drainage improvement or water quality feature, such as a grass-lined swale, is proposed within the buffer; or
- F. There has previously been substantial alteration of the adjacent buffer, and an increased buffer is necessary to improve the functions and values of the buffer; or
- G. When the minimum buffer for a stream extends into an area with a slope of greater than 25 percent, the buffer shall be the greater of:
  1. The minimum buffer for that particular stream type; or

2. Twenty-five feet beyond the point where the slope becomes 25 percent or less.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.067 Decreased stream buffer width.**

Any stream which is restored, relocated, replaced or enhanced because of stream alterations shall have at least the standard buffer width required for the class of stream involved. For other development proposals, the Director may reduce the standard stream buffer widths on a case-by-case basis where the applicant demonstrates that:

- A. The buffer is extensively vegetated, has less than a 15 percent slope, and that no adverse impact to the stream will result from the proposed reduction; and
- B. The proposal includes a buffer enhancement plan using native vegetation which substantiates that an enhanced buffer will improve the functional values of the buffer to provide additional protection of the stream; and
- C. A decreased buffer shall not result in buffer widths less than:
  1. Category 1 streams: 75 feet
  2. Category 2 streams: 45 feet
  3. Category 3 streams: 25 feet
- D. When a reduced buffer width is allowed, a mitigation, monitoring and contingency plan consistent with the provisions of LMC 17.10.062, 17.10.063, 17.10.064, 17.10.111 and 17.10.125 (as applicable) shall be required by the City.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.068 Averaging of stream buffer widths.**

Standard stream buffer widths may be modified by averaging buffer widths. Buffer width averaging will be allowed only where the applicant can demonstrate that:

- A. The total area contained within the stream buffer after averaging is no less than that contained within the approved buffer prior to averaging; and
- D. Averaging is necessary to avoid an extraordinary hardship to the applicant caused by circumstances peculiar to the property; and
- E. The averaged buffer, at its narrowest point, shall not result in a buffer width less than  $\frac{3}{4}$  of the buffer width allowed for that proposal; and
- F. A mitigation and enhancement plan is prepared for the proposal; and
- G. Width averaging will not adversely impact the stream functional values.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.069 Riparian wetland.**

Any stream adjoined by a riparian wetland shall have the buffer which applies to the wetland, unless the stream buffer requirement is more protective, in which case the stream buffer requirement shall apply.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.070 Building setback line – Streams.**

A building setback line of 15 feet shall be required from the edge of any stream buffers. Following construction, this helps to prevent encroachment into the buffer while maintaining such structures. Fences and minor structural intrusions as defined in LMC 21.02.105 into the area may be allowed if the department determines that such intrusions will not negatively impact the stream. The setback shall be identified on the site plan approved by the City.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.080 Fish and wildlife priority habitat.**

The following environmentally critical areas may be considered priority habitat for the protection of fish and wildlife in the City:

- A. Category I and Category II wetlands;
- B. Category I streams;
- C. Category II streams if used by salmonids;
- D. Upland areas if one or more of the following criteria are met:
  - 1. The presence of essential habitat; or
  - 2. Areas contiguous with large blocks of distinct habitat extending outside of the City limits or providing a travel corridor to a significant resource; or
  - 3. Areas adjacent to or contiguous with Category I wetlands which enhance the value of those wetlands for wildlife.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.081 Wildlife habitat assessment.**

If a development is proposed within or adjacent to an identified “priority habitat area,” the applicant shall provide a wildlife habitat assessment prepared by a qualified professional. The assessment shall include an inventory of the priority species, an evaluation of the habitat, and recommendations for protection of the habitat and species of concern shall be provided. The City may ask appropriate resource agencies to review and comment on the proposal’s potential impact on habitat and species. Based upon recommendations from resource agencies and qualified professionals, the City may attach conditions to land use and development permits to prevent, minimize, or mitigate impacts to the habitat area.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.090 Geologically hazardous areas – Identification.**

The following are classified as geologically hazardous areas:

- A. Naturally occurring slopes of 40 percent or more;
- B. Other areas which the City has reason to believe are geologically unstable due to factors such as landslide, seismic or erosion hazards.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.091 Geologically hazardous areas – Setbacks.**

Development proposals on lots which are designated as or which the City has reason to believe are geologically unstable or hazardous shall be set back a minimum of 25 feet



from top, toe and sides of such areas (as applicable). The setback requirement may be increased by the City when necessary to protect public health, safety and welfare, based upon information contained in a geotechnical report.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.092 Geologically hazardous areas – Alteration allowed.**

Unless associated with a stream or wetland, the City may allow alteration of an area identified as a geologically hazardous area, or its setback. In order to perform such alteration, the applicant shall submit to the department a geotechnical report, containing all elements described in section 17.10.094, and must demonstrate:

- A. The proposed development will not create a hazard to the subject property, surrounding properties, or rights-of-way, nor will it cause severe erosion, or deposit excessive sedimentation to off-site properties or bodies of water; and
- B. The proposed method of construction will reduce erosion, landslide, and seismic hazard potential, and will improve or not adversely affect the stability of slopes; and
- C. The proposal uses construction techniques which minimize disruption of existing topography and natural vegetation; and
- D. The proposal is consistent with the purposes and provisions of this chapter.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.093 Geologically hazardous areas – Alteration conditions.**

Alteration allowed by this chapter shall be subject to the following requirements:

- A. All proposed development be designed and located so as to require the minimum amount of modification to areas of potential geologic instability; and
- B. All impacts identified in the geotechnical report be adequately mitigated; and
- C. As a condition of any approval of development containing a geologically hazardous area or its required setbacks, the City may also require that:
  1. The applicant's geotechnical consultant be present on the site during clearing, grading, filling and construction activities which may affect geological hazard or unstable areas, and provide the City with certification that the construction is in compliance with his/her recommendations and has met with his/her approval; and
  2. Trees and groundcover be retained and additional vegetation or other appropriate soil stabilizing structures and materials be provided.

(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.094 Geotechnical report content requirements.**

Geotechnical reports shall be prepared by a geotechnical engineer or geologist, as appropriate. Geotechnical reports shall be stamped and signed by an engineer. Based on

the characteristics of the site, the Director may require any or all of the following items to be addressed in the geotechnical report:

- A. A site development plan drawn to scale which shows the boundary lines and dimensions of the subject property, the geologically hazardous areas, the location, size, and type of any existing or proposed structures, impervious surfaces, wells, drain fields, drain field reserve areas, roads, easements, and utilities located on site; and
  - B. A site map identifying the location of springs, seeps, or other surface expressions of ground water, and the location of surface water or evidence of seasonal surface water runoff or ground water; and
  - C. A discussion of the geological properties of the soils, including any fill, sediment layers, and / or rocks on the subject property and adjacent properties and their effect on the stability of the slope; and
  - D. The extent and type of vegetative cover prior to development activity or site disturbance; and
  - E. The proposed method of drainage and locations of all existing and proposed surface and subsurface drainage facilities and patterns, and the locations and methods for erosion control; and
  - F. A description of the soils in accordance with the Unified Soil Classification System; and
  - G. Identification of all existing fill areas; and
  - H. Information demonstrating compliance with all applicable; and
  - I. Evidence showing faults, significant geologic contacts, landslides, or downslope soil movement on the subject property and adjacent properties; and
  - J. A vegetation management and restoration plan, or other means necessary for maintaining long-term stability of slopes.
- (Ord. 2598, 2005)

#### **17.10.100 Buffer credit.**

Where buffers around critical areas are required by this chapter, the number of allowable lots or potential dwelling units in residential development proposals, and the amount of lot coverage in nonresidential proposals, may be increased as stated in subsections (A) and (B) of this section. This buffer credit is designed to provide incentives for the preservation of critical areas, flexibility in design, and consistent treatment of different types of development proposals.

- A. The following buffer credit calculations shall apply to all residential zones:
  - 1. Single-Family Residential and Duplex Residential Zones with Minimum Lot Standards.  
  
$$\frac{\text{total amount of net development area} + \text{total amount of area in buffer}}{\text{minimum zoned lot size}} = \text{number of lots}$$
  - 2. Multifamily Residential, Excluding the Duplex Residential Zone.

total amount of net development area  
+ total amount of area in buffer = number of density units  
maximum zoned density units

3. This credit shall be subject to the following:
  - a. Only that buffer area located within areas required by the City of Lynnwood to be dedicated or reserved as separate tracts shall be counted.
  - b. Use of this credit shall not waive nor modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards, except as noted in subsection (A)(3)(c) of this section.
  - c. To the extent that application of the buffer credit may result in lot sizes less than the minimum allowed in the zone in which the proposal is located:
    - i. In no case shall such lot sizes be less than 90 percent of the minimum allowed lot size, except in the RS-7 zone, which shall be no less than 95 percent; and
    - ii. In order to keep the relationship between lot width and area reasonable, lot width may be up to, but not more than, five feet narrower than the minimum allowed.

- B. The following buffer credit shall apply to all nonresidential-zoned areas: In nonresidential-zoned areas, the amount of the site that may be covered under the zoning code shall be calculated by applying the maximum allowed lot coverage to the combination of the net development area and the area in buffers.

Use of this credit shall not waive or modify any other required provision of the Lynnwood Municipal Code including, but not limited to, zoning or subdivision regulations or standards. (Ord. 2257 § 1, 1999; Ord. 1877, 1992; Ord. 2598, 2005)

#### **17.10.110 Low-impact use of buffer - Allowed.**

Installation of low-impact permeable pedestrian trails and viewing platforms in critical areas and their buffers may be approved by the Director. These uses must be mitigated for according to the applicable terms and conditions detailed in this chapter, and according to the type of critical area being affected. (Ord. 2598, 2005)

#### **17.10.111 Critical areas signs, monuments and fencing.**

- A. The boundary of a critical area will be delineated by survey stakes, and / or tape at the time of the completion of the critical area report. The buffer will be established as measured from that boundary. During construction, the buffer edge will be delineated and identified using plastic tape and silt fence, or any other effective measure to prohibit construction activities from encroaching into the critical area and its associated buffer. Those measures will be maintained until completion of the project.

- B. Upon completion of the construction of the project, the boundary of the critical area and / or buffer will be designated with permanent signs, monuments and fencing, the design and spacing of which will be left to the discretion of the Public Works Director.
- C. All critical areas and their buffers which have been protected through the application of this chapter, shall be permanently protected by designating them as native growth protection areas (NGPAs).  
(Ord. 2598, 2005)

**17.10.120 Appeals.**

Any person who objects to the final order of the City under this chapter may file an appeal to the hearing examiner using the procedure under Process II (LMC 1.35.200 through 1.35.260, unless such appeal pertains to the Reasonable Use Exception determination, which shall be binding.

(Ord. 2076 § 22, 1996; Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.125 Notice, performance securities, bonds, administration.**

- A. Notice. The owner of any property found to contain critical areas or buffers, on which a development project is submitted, shall file for record with Snohomish County a notice approved by the City. Such notice shall identify in the public record the presence of any critical areas or buffers, the application of this chapter to the property, and state that limitations on actions in or affecting such areas may exist.  
The owner shall submit proof to the Director that the notice has been filed for record with Snohomish County before the City shall approve any development proposal for such site. The notice shall run with the land and failure to provide such notice to any purchaser prior to transferring any interest in the property shall be a violation of this chapter.
- B. Performance Securities. The Director may require the applicant of a development proposal to post a cash performance bond or other acceptable security in a form and amount determined sufficient to guarantee satisfactory workmanship, materials, and performance of structures and improvements allowed or required by application of this chapter. The Director shall release the security upon determining that all requirements established by this chapter have been satisfactorily completed.
- C. Maintenance / Monitoring Bonds. The Director may require the applicant whose development proposal is subject to a mitigation plan to post a maintenance / monitoring bond or other security instrument in a form and amount determined sufficient to guarantee satisfactory performance for a period of up to five years. The bond amount shall be no less than 125% of the estimated cost of the mitigation project including any plant materials, soil amendments, temporary irrigation, signs and monuments, and monitoring proposed. The duration of maintenance / monitoring obligations shall be no less than 5 years, unless determined otherwise by the Director after consideration of the nature of the proposed mitigation and the likelihood and expense of mitigation failures. The Director shall

release the security upon determining that the mitigation plan has achieved satisfactory success. The performance standards of the mitigation plan shall be agreed upon by the Director and the applicant during the review process and shall be specified in the mitigation plan.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.130 Unauthorized alterations.**

When environmentally critical areas and / or their associated buffers have been illegally altered, the City may require them to be restored to their unaltered condition, and subject them to all terms and conditions of this chapter, including but not limited to increasing the area of the critical area and buffer as compensation for the alteration.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.131 Enforcement, violations and penalties.**

It shall be unlawful for any person, firm, or corporation to violate any provision of this chapter. The Director shall have the authority to enforce any and all provisions of this chapter, by proceeding with the following actions in progressive severity, except in cases where a delay would result in further loss and / or degradation of critical areas:

- A. Stop work orders. For any action which appears to be in violation of this chapter, the Director shall have the authority to order the party in question to immediately stop all work until such time as the Director determines that the action is in compliance with the terms and conditions of this chapter.
- B. Civil remedies and penalties. Any person, firm corporation, or association or any agent thereof who violates any of the provisions of this chapter may be subject to the following civil penalties:
  1. The City may issue a notice and order under Chapter 1.40 LMC stating any person, firm, corporation or association or any agent thereof who violates any of the provisions of this chapter shall be liable for all damages to public or private property arising from such violation, including the cost of restoring the affected area to an equivalent or improved condition prior to the violation, and set a reasonable amount of time for compliance.
  2. The City may require restoration. Restoration may include but is not limited to, the replacement of all improperly removed vegetation with species similar to those which were removed or other approved species such that the biological and habitat values will be replaced or improved to the greatest extent reasonably possible. A study by a qualified expert(s) shall be conducted to determine the conditions which were likely to exist prior to the illegal alteration. Restoration may also include installation and maintenance of erosion control measures.
  3. In addition to requiring restoration, the City may assess civil penalties as provided in LMC 1.01.085.

4. The City may require a maintenance bond to insure compliance with the City's order, subject to the bonding procedure established in section 17.10.125 of this chapter.
5. If the order requiring restoration is not complied with, then the property owner shall be subject to a civil fine of \$100 per day.
6. If the noncompliance continues for more than thirty (30) days, civil penalties shall be increased to \$500 per day up to a maximum of \$10,000. Fines shall stop on the day that compliance with the order begins, pending successful completion with the compliance order.
7. Any person who objects to a final order of the City under this section may file an appeal to the hearing examiner using the procedure under Process II in LMC 1.35.200 through 1.35.260.
8. Any unpaid civil fines may become a lien against the property, and the City may record said lien.  
(Ord. 1877, 1992; Ord. 2598, 2005)

**17.10.140 Severability.**

If any paragraph, clause, sentence, section or part of this chapter or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any part thereof to any other person or circumstances and to this end the provisions of each paragraph, clause, sentence, section or part of this chapter are hereby declared to be severable.

(Ord. 1877, 1992; Ord. 2598, 2005)

Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

Section 4. Effective Date. This regulations included in this ordinance shall take effect March 13<sup>th</sup>, 2006, which is more than five (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED THIS 12<sup>th</sup> day of December, 2005, and signed in authentication of its passage this \_\_\_\_\_ day of December, 2005.

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MIKE MCKINNON, Mayor

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PATRICK DUGAN, Interim Administrative Services Director

APPROVED AS TO FORM:

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MIKE RUARK, City Attorney

FILED WITH THE CITY CLERK:

PASSED BY THE CITY COUNCIL: December 12<sup>th</sup>, 2005

PUBLISHED:

EFFECTIVE DATE: March 13<sup>th</sup>, 2006

ORDINANCE NO. 2598

**SUMMARY OF ORDINANCE NO. 2598**

of the City of Lynnwood, Washington

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On the 12<sup>th</sup> day of December 2005, the City Council of the City of Lynnwood passed Ordinance No. 2598. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LYNNWOOD, WASHINGTON, RELATING TO THE REGULATION OF CRITICAL AREAS; AMENDING SECTIONS 17.10 OF THE LYNNWOOD MUNICIPAL CODE; PROVIDING FOR SEVERABILITY; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SUMMARY PUBLICATION.

The full text of this Ordinance will be mailed upon request.

DATED this \_\_\_\_\_ day of December, 2005.

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PATRICK DUGAN  
Interim Administrative Services Director